
Zoning Ordinance

Article Ten

Nonconforming Structures, Lots, and Uses

Nonconforming Structures, Lots, and Uses

10.1 Intent

Upon adoption of this Ordinance and Official Zoning Map, some structures, lots, and uses may no longer conform to the regulations of the zoning district in which they are located. For this reason, this Article has been generated to provide the rules, policies and regulations that apply to these structures, lots, and uses; referred to as Legal Nonconforming.

10.2 Distinction Between Illegal Nonconforming and Legal Nonconforming

A structure or lot which was constructed or is being used without an approved Improvement Location Permit or approval from the Board of Zoning Appeals or Plan Commission is considered illegal nonconforming. An illegal nonconforming property shall be subject to actions and penalties allowed by this Ordinance and all other applicable County laws and shall be altered to conform with all applicable standards and regulations of this Ordinance. Further, an illegal nonconforming structure, lot or use is created at the fault of the owner, tenant or property manager.

Legal Nonconforming differs from Illegal Nonconforming in that the reason for the nonconformance is caused by the enactment of a Zoning Ordinance or a change to the Zoning Ordinance (including the Official Zoning Map). The structure, lot or use has not changed, but due to the Zoning Ordinance enactment or change, the property no longer conforms to the policies and standards of the zoning district in which it is located. When this situation occurs, the property is deemed Legal Nonconforming or "Grandfathered".

10.3 Nonconforming Signs

Any sign, lawfully established prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meets the developmental standards shall be deemed a Legal Nonconforming Sign. For the purposes of this Article, a sign shall include the sign face and any supports, poles, or frames.

A legal nonconforming sign may continue provided that it remains the same or fits within the below described tolerances:

- A. Any legal nonconforming sign shall not be enlarged or altered in terms of face area, height, or any other aspect that increases its nonconformity. However, any sign or portion thereof may be altered to decrease its nonconformity.
- B. Any legal nonconforming sign which is intentionally altered to conform to the requirements of this Ordinance shall thereafter conform to the regulations of the district in which it is located, and the legal nonconforming features may not be resumed.
- C. If a sign is moved or removed for any reason, for any distance, it shall thereafter conform to the provisions of this Ordinance.
- D. The sign faces and/or message on a legal nonconforming sign may be altered, replaced, repainted, and repaired provided that the nonconformity of the sign is not increased. Nothing in this Article shall be interpreted as requiring a sign to be brought into conformance with this Ordinance if only the face is changed, but not increased in size or altered in shape.

10.4 Nonconforming Structures

Any structure, lawfully established prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meets the developmental standards shall be deemed a Legal Nonconforming Structure.

A legal nonconforming structure may continue provided that it remains the same or fits within the below described tolerances:

- A. Any legal nonconforming structure shall not be enlarged or altered in a manner that increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- B. Any legal nonconforming structure which is intentionally altered to conform to the requirements of this Ordinance shall thereafter conform to the regulations of the district in which it is located, and the legal nonconforming features may not be resumed.
- C. If a building or structure is moved for any reason, for any distance, it shall thereafter conform to the provisions of this Ordinance.

10.5 Nonconforming Lots of Record

All lots legally established and recorded prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet any applicable provision of this Ordinance shall be deemed a Legal Nonconforming Lot of Record. Legal Nonconforming Lots of Record may be built upon only if the proposed use is permitted and all development standards of the applicable zoning district of this Ordinance are met. Any lot which met minimum lot standard area at the time it was created, shall be deemed buildable for a single family residence.

10.6 Nonconforming Uses of Structures, Land, or Structures and Land in Combination

Any lawful use of structures, land, or structures and land in combination established prior to the effective date of this Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located shall be deemed a Legal Nonconforming Use. A legal nonconforming use may continue provided that it remains otherwise lawful, subject to the following conditions:

- A. Parcels that were zoned business and/or industrial on the zoning map that was in effect prior to July 15, 2002, and are currently zoned AG or CR, may be expanded by Special Use through the Madison County Board of Zoning Appeals, up to 25% of their floor area (as it existed July 15, 2002). In addition, when the expansion exceeds 10% of the floor area, site plan approval from the Madison County Technical Review Committee must be obtained. No other existing structure devoted to a legal nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, moved, or structurally altered except as to change the use of the structure to a use permitted in the district in which it is located or as otherwise specified in this Article.
- B. No structure shall be constructed in connection with an existing legal nonconforming use of land.
- C. Any legal nonconforming use of a structure may be extended throughout any parts of a building which were plainly arranged or designed for such use at the effective date of this Ordinance or its subsequent amendments, but no such use shall be extended to occupy any land outside the building.
- D. If no structural alterations are made, any non-conforming use may be changed to another non-conforming use with the approval of the Board of Zoning Appeals. The Board shall find that the proposed use is equally or more appropriate to the district in which it is located than the existing use. The Board shall consider the development standards applicable to the proposed use established by this Ordinance and may make reasonable conditions as part of any approval.
- E. Where legal nonconforming use status applies to a structure and land in combination, the intentional removal of the structure shall eliminate the legal nonconforming status of the land.
- F. No legal nonconforming use of land shall be enlarged, increased, extended to occupy a greater area of land, or moved in whole or in part to any other portion of a lot than was occupied at the effective date of this Ordinance.

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- G. If a legal nonconforming use is intentionally discontinued for 1 year or longer, any subsequent use of such land, structure or land and structure shall conform to the provisions of this Ordinance. Uses which are required to be discontinued due to government action which impedes access to the premises, or damage resulting from fire, flood, other natural disaster, or a criminal act shall be exempt from this provision. Such exempt uses, if rebuilt or restored, shall be identical in scale, lot coverage, and all other aspects to that which was discontinued.
 - H. When a legal nonconforming use is superseded by a permitted use, it shall thereafter conform to the regulations of the district in which it is located, the legal nonconforming use may not thereafter be resumed.
 - I. Any use which is legal nonconforming due to its presence in a 100-year floodplain may be altered, enlarged, or extended on a one-time only basis provided that the new construction conforms with the Flood Hazard Area Standards section included in this Ordinance and does not increase the value of the structure or use (excluding the value of the land) by more than 50% of its pre-improvement market value.

10.7 Repairs and Maintenance

The following applies to legal nonconforming structures and legal nonconforming uses of structures, or structures and land in combination:

- A. Work may be done for ordinary repairs or replacement of walls, heating, fixtures, wiring, or plumbing; under the condition that the cubic content existing when the structure became nonconforming shall not be increased.
- B. If a structure becomes unsafe or unlawful due to physical condition and is razed, the structure shall be rebuilt in conformity with the district in which it is located.
- C. Nothing in this Section shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting public safety upon order of such official.

10.8 Standards for Nonconforming Uses

- A. The planning director has the discretion to apply the standards of the zoning district where the nonconforming use is permitted to the zoning district where the nonconforming use is found.